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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,621	12/04/2003	Alan W. Eastman	050418-0439	5748

22428 7590 04/22/2004

FOLEY AND LARDNER  
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3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

WHITE, RODNEY BARNETT

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/726,621

Applicant(s)

EASTMAN ET AL.

Examiner

Rodney B. White

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/4/03</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 4-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 and 7 of Eastman (U.S. Patent No. 6,705,675) in view of Kain (U.S. Patent No. 4,754,999).

Eastman teaches the structure substantially as claimed but does not claim the belt channel formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat though it is disclosed. However, Kain teaches a belt channel 51 formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat. (claims 1 and 13-15) to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the child safety seat, as taught by Eastman, to

Art Unit: 3636

include a belt channel, as taught by Kain, since it is a conventional method of securing a child safety seat to a vehicle seat.

Claims 1 and 4-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 and 7 of Eastman (U.S. Patent No. 6,705,675) in view of Meeker et al (U.S. Patent No. 5,458,398).

Eastman teaches the structure substantially as claimed but does not claim the belt channel formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat though it is disclosed. However, Meeker et al teaches a belt channel 23,25,27 formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat. (claims 1-4) to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the child safety seat, as taught by Eastman, to include a belt channel, as taught by Meeker et al, since it is a conventional method of securing a child safety seat to a vehicle seat.

Claims 1 and 4-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 and 7 of Eastman (U.S. Patent No. 6,705,675) in view of Kain (U.S. Patent No. 6,428,099).

Eastman teaches the structure substantially as claimed but does not claim the belt channel formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat though it is disclosed. However, Kain teaches a belt channel 129

Art Unit: 3636

formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat. (claims 1 and 13-15) to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the child safety seat, as taught by Eastman, to include a belt channel, as taught by Kain, since it is a conventional method of securing a child safety seat to a vehicle seat.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 19-20, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Branke et al (U.S. Patent No. 6,227,616)

*Branke et al teach a child seat comprising a seat body including a seat back and a seat portion connected to the seat back, wherein the seat portion comprises a first base connected to the seat back and a second base connected to the first base, the first and second bases ' together defining an upper seating surface upon which to sit, a seat adjusting mechanism that connects the first base and the second base and that allows the second base to be adjusted in a plane parallel to a bottom surface of the seat body between a retracted, in-use position and an extended in-use position relative to the first base to shorten or lengthen respectively the seating surface, and a belt channel formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat, a recline mechanism connected to the first and second bases, for selectively tilting the seat body relative to a vehicle seat, wherein the recline mechanism is adapted to tilt the seat body regardless of the relative position between the first and second bases, wherein the seat adjusting mechanism is located underneath the seating surface. (See Figures 2-6 and 8-10).*

Claims 1,19-20, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Kassai et al (U.S. Patent No. 6,481,794)

*Kassai et al teach a child seat comprising a seat body including a seat back and a seat portion connected to the seat back, wherein the seat portion comprises a first base connected to the seat back and a second base connected to the first base, the first and second bases ' together defining an upper seating surface upon which to sit, a seat*

Art Unit: 3636

*adjusting mechanism that connects the first base and the second base and that allows the second base to be adjusted in a plane parallel to a bottom surface of the seat body between a retracted, in-use position and an extended in-use position relative to the first base to shorten or lengthen respectively the seating surface, and a belt channel formed in the seat body for receiving a vehicle belt to secure the seat body to a vehicle seat, a recline mechanism connected to the first and second bases, for selectively tilting the seat body relative to a vehicle seat, wherein the recline mechanism is adapted to tilt the seat body regardless of the relative position between the first and second bases, wherein the seat adjusting mechanism is located underneath the seating surface. (See Figures 18-20).*

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kassai et al in view of Carnahan et al (U.S. Patent No. 6,474,735)

Kassai et al teaches the structure substantially as claimed but does not teach at least a first armrest mounted to one of a left-hand side and a right-hand side of the second base, the first armrest being movable with the second base.

Art Unit: 3636

the first armrest is mounted on the left-hand side of the second base, and further including a second armrest mounted on the right-hand side of the second base, wherein each of the first and second armrests is asymmetrically mounted to the second base about an axis and is rotatable between a first position and a second position, an arm resting portion of each armrest being higher in the first position than in the second position. However, Carnahan et al teaches such armrests to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the child safety seat, as taught by Kassai et al, to include adjustable armrests, as taught by Carnahan et al, since such armrests would provide various levels of comfort for a child as well as adjust to the growth of the child.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kassai et al in view of Carnahan et al as applied to claims 7-13 above, and further in view of Lemmeyer et al (U.S. Patent No. 6,478,372).

Kassai et al in view of Carnahan et al teaches the structure as claimed but does not teach the cup holder as defined in claim 14. However, Lemmeyer et al teach such a cup holder to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the child seat, as taught by Kassai et al in view of Carnahan et al, to include a cup holder, as taught by Lemmeyer et al, since it would allow beverages

Art Unit: 3636

to be stored in that cup holder while the child is not consuming it and if the child is old enough, that he can place the beverage in the cup holder himself.

1. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kassai et al in view of Laauser (German Patent No. DE 33 00 506 A1).

Kassa et al teach an adjustable headrest but but does not teach all the specifics as defined in claim 26-27. However, Laauser teaches a headrest adjustably mounted to the seat back wherein the seat back has a front surface and the headrest has back surface, the headrest being adjustable between a first position at which at least a portion of the back surface of the headrest overlaps the front surface of the seat back and a second position at which the back surface of the headrest clears the front surface of the seat back. Laauser also teaches the headrest being adjustable between a first position at which at least a portion of the back surface of the headrest overlaps the front surface of the seat back and a second position at which the back surface of the headrest substantially overlaps the front surface of the seat back. It would have been obvious and well within the level of ordinary skill in the art to modify the seat, as taught by Kassai et al, to include a an adjustable mounted headrest, as taught by Laauser, since such a headrest would eliminate a gap between the headrest and the seat back top when extended.

2. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kassai et al in view of Russo et al (U.S. No. 4,693,515).

Kassai et al teach an adjustable headrest but but does not teach all the specifics as defined in claim 27. However, Russo et al teaches a headrest adjustably mounted to the seat back wherein the seat back has a front surface and the headrest has back surface, the headrest

Art Unit: 3636

being adjustable between a first position at which at least a portion of the back surface of the headrest overlaps the front surface of the seat back and a second position at which the back surface of the headrest substantially overlaps the front surface of the seat back. It would have been obvious and well within the level of ordinary skill in the art to modify the seat, as taught by Kassai et al, to include a an adjustable mounted headrest, as taught by Russo et al, since such a headrest would eliminate a gap between the headrest and the seat back top when extended.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Combs and Kain teach removable cup/beverage holders. Asbach et al, Williamns et al, Kassai, and Kassai et al teach a vertically adjustable headrest on a child seat. Morris, Elsholz et al, Bryans et al, KassaiSankrithi et al, Leggett, Gunji, Kain, Sher, Koyanagi et al, Lopez, LefrancGonas, Cone, II, Cabagnero, Franco-Villa, Kassai et al, Burleigh, Kain, et al, Vila et al, Yamazaki, YanagiharaWarner et al, Yanaka et al, Weathersby Berringer et al teach various methods of securing child seats to a vehicle seats.

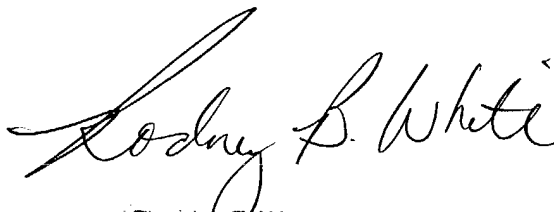
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276. The examiner can normally be reached on 5:30 AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
April 15, 2004



Rodney B. White  
Patent Examiner